IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 23314 of 2006(A)

PETITIONER:

P.A. VINCENT, PANAKKOOTTATHIL,
PRAKASH NIVAS, GODOWN ROAD, EDAPPALLY,
ERNAKULAM-682 024.
2ND CLASS ENGINE DRIVER,
MARINE DEPARTMENT.

BY ADV. SRI.P.A.VINCENT(PARTY IN PERSON)

RESPONDENTS:

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1. CHAIRMAN, COCHIN PORT TRUST,
WILLINGTON ISLAND,
COCHIN-682 009.

2. HON'BLE SECRETARY, MINISTRY OF
SHIPPING AND TRANSPORT, GOVERNMENT OF INDIA,
NEW DELHI.

BY ADV. SRI.JOBY CYRIAC, CGC
SRI.ANTONY DOMINIC
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON 18/01/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 MEMO E/DP/PAV/79 DT 20.3.79 OF THE DREDGING SUPERINTANDENT OF R1.

P2 ORDER DT 20.3.79 OF R1.

P3 MEMORANDUM DT 20.3.79 OF R1.

P4 ORDER DT 20.3.79 OF R1.

P5 ORDER DT 7.6.79 OF R1.

P6 ORDER DT 14.5.80 OF R1.

P7 ORDER DT 14.5.80 OF R1.

P8 ORDER DT 14.5.80 OF R1.

P9 JUDGMENT DT 10.4.80 IN OP.1215/80.

P10 LETTER DT 18.4.80 OF R1.

P11 NOTIFICATION DT 7/8 MAY 1952.

P12 JUDGMENT DT 8.8.80 IN OP.1637/80.

P13 PETITION DT 4.11.80 BY THE PETITIONER TO R2.

P14 ORDER DT 22.11.80 OF THE RESPONDENT.

P15 MEMORANDUM OF APPEAL DT 21.2.81 TO RESPONDENT.

P16 LETTER DT MARCH 27, 1982.

P17 LETTER DT 16.11.85.

P18 LETTER DT 20.7.86.

P19 LETTER DT 13.7.01.

P20 LETTER DT 24.9.01 OF R1.

P21 JUDGMENT DT 23.9.02 IN OP.9542/02.

P22 ORDER DT 28.3.78.

P23 MEMORANDUM DT 19.12.79 BY R1.

P24 MEMORANDUM DT 20.6.00 OF R1.

P25 LETTER DT 31.10.02 TO R1.

P26 NOTICE DT 20.4.06.

P27 ORDER DT 31.5.06.

P28 ORDER DT 27.9.72 OF R1.

RESPONDENT'S EXHIBITS:

R1(A) STATEMENT DT 21.1.02.

R1(B) JUDGMENT DT 3.9.03 IN OP.12384/03.

R1(C) JUDGMENT IN WA.1002/04 DT 9.6.04.

R1(D) MEMO DT 30.9.80.

R1(E) REQUEST DT 8.10.80.

R1(F) LETTER DT 5.11.85 TO R1.

R1(G) EXTRACT OF REGULATION 391)(C) OF COCHIN PORT TRUST EMPLOYEES (CLASSIFICATION, CONTROL AND APPEAL) REGULATIONS.

TRUE COPY

P.A. TO JUDGE

S. SIRI JAGAN, J.

W.P. (C) No. 23314 OF 2006 A

Dated this the 18th day of January, 2007

J U D G M E N T

The petitioner, who was a former employee of the Cochin Port Trust, has filed this writ petition seeking the following reliefs:

> (i) call for the entire records leading to Ext.P2 to 8 and P14 including the rules and Regulation mentioned therein"Rules for the Regulation of the Conditions of the employment of the Industrial Staff of Cochin Port and to issue a writ of certiorari or any other appropriate writ order or direction finding that they are illegal and unconstitutional and passed without jurisdiction;
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> (ii) issue a writ of mandamus or other appropriate order to the respondents to disburse to the petitioner salary and other benefits treating as continuing in service from 20.3.79 till the petitioner attains the age of superannuation and other benefits as per Rules.

2. Exts.P2 to P8 are proceedings in the disciplinary proceedings which ended in Ext.P14 order by which the 1st respondent, Chairman of the Port Trust, imposed on the petitioner the punishment of dismissal from service. Ext.P14 is dated 22.11.1980. It appears that the petitioner had filed Ext.P15 appeal before the Government of India against Ext.P14 order on 21.2.1981. He did not pursue the appeal. According to the petitioner, no orders have been passed in the said

appeal. He would submit that the entire disciplinary proceedings are vitiated on various grounds including the grounds that the rules and regulations under which the proceedings have been initiated and concluded are unconstitutional.

3. I have heard the petitioner, who appeared in person and argued the matter. He narrated before me the entire history of his case. He would submit that he has been subjected to hostile discrimination by the Cochin Port Trust and that the dismissal was an act of victimisation for his union activities which the 1st respondent did not like.

4. The counsel for the 1st respondent, with the help of the counter affidavit filed, would controvert the contentions of the petitioner. He would submit that the disciplinary proceedings were conducted in full compliance with the principles of natural justice and the petitioner was found guilty of the misconduct alleged against him and since the same was serious enough to warrant the punishment of dismissal by Ext.P14 order, the petitioner was dismissed from service.

5. I have considered the rival contentions in detail.

6. From the pleadings before me I find that the petitioner has filed several writ petitions and writ appeals before this court. All of them were in relation to his dismissal from service. Of course, except getting some orders directing the 1st respondent to furnish the petitioner

with copies of the rules and regulations and some relief regarding payment of subsistence allowance, the petitioner was not able to succeed in his quest for getting his dismissal from service set aside. In fact, as revealed from Ext.R1(b) judgment in OP NO.12384/03, a Division Bench of this court had in W.A. No.24548/02 held as follows:

> " Mr.Vincent submits that the appeal filed by him has not been decided till today. Such a contention cannot be accepted after the lapse of more than 20 years. In fact, there is not even a prayer in the petition under Article 226 of the Constitution that the respondent-authority have directed to decide the appeal. The counter affidavit indicates that the appeal had not been entertained as it was barred by time and there was no prayer for condonation of delay."

7. Further, the petitioner also tried to raise an industrial dispute to challenge his dismissal from service. The same was rejected by the Government on the ground of long delay. It is against that order the petitioner had filed OP. No.12384/03 in which the above said paragraph from the judgment in the writ appeal was quoted. The learned single Judge found no grounds to interfere with the order passed by the Government declining to refer the I.D. raised by the petitioner on account of unexplained delay of 21 years. The petitioner had filed W.A. No.1002/04 against that judgment. The judgment in that writ appeal is Ext.R1(c). In Ext.R1(c) also the Division Bench confirmed the order of the Government declining to refer the dispute for

adjudication by the Labour court. As such, the petitioner has lost on all fronts in his challenge against the disciplinary proceedings against him which culminated in his dismissal from service by Ext.P14 order. I am afraid that the petitioner cannot now resurrect the same stale cause of action by filing another writ petition in the guise of challenging the rules and regulations since the challenge against rules and regulations themselves are only secondary to the challenge against the dismissal order which has already been repelled by various judgments of this court. In the above circumstances, I do not find any merit in this writ petition. Accordingly the same is dismissed.

(S. SIRI JAGAN, JUDGE)

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